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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/768,476	01/24/2001	Bruce A. Fogelson	6040/80679	1531

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EXAMINER

MCALLISTER, STEVEN B

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 11/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/768,476

Applicant(s)

FOGELSON, BRUCE A.

Examiner

Steven B. McAllister

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My

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

The patent application file lists an Information Disclosure Statement submitted by the Applicant on 1/24/01. However, the IDS is not physically in the case and was presumably lost by the Office. Therefore, the examiner is not able to consider the IDS at this time.

The examiner respectfully requests that the Applicant submit a copy of the IDS so that it may be considered.

Claim Objections

Claims 10, 22 and 34 are objected to because of the following informalities: It is unclear what the scope of the is. The claims recite "defining the web tools as e-mail real-time chat ...". It is not clear from the claims whether a combination of all recited tools is necessary to read on the claim or whether one of the tools is necessary to read on the claim. In examining the claims it was interpreted as requiring one of the recited tools. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 10, 11, 22, 23, 34 and 35 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 10, 22, and 34 recite that the third part website provider provides web tools comprising "escrow, e-business, job reports, attendance, ..., next day activity lists, job logs...". However, as understood by the examiner, the specification does not show all of these web tools. For instance, it is not clear that the website provider provides escrow (or that escrow is a web tool), or that the website provider prepares activity lists. Due to uncertainty regarding the interpretation of the claims, no examination on the merits is attempted.

Claims 11, 23, and 35 recite that the step of collecting the fee or commission based on the views and selections of the customer comprises "collecting up-front access, semi-custom web design, and data service fees or commissions". However, as understood by the examiner, the specification describes these as additional fees that can be charged in an alternate embodiment. In examining the claims, it is interpreted that the claimed charges are further collected in addition to the commission based on customer views and selections.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 7-10, 13, 19-22, 25 and 31-34 are rejected under 35 U.S.C. 102(a) as being anticipated by "RFP Marketing Opportunities Abound At: 'Design Your Dream House'" (RFP) or alternatively rejected under 35 U.S.C. 103(a) as being unpatentable over RFP in view of Realtor.com.

RFP shows providing a website by a third party provider for use by the customer in view and selecting product options; providing a variety of related forms and services; receiving through the website a view and selection of an option and collecting a fee based on the products viewed and selected by the customer; and providing a second website associated with the first website by the third party (e.g., 2d full paragraph of pg. 3).

Alternatively, RFP shows providing a website by a third party provider for use by the customer in view and selecting product options; providing a variety of related forms and services; receiving through the website a view and selection of an option and collecting a fee based on the products viewed and selected by the customer; and providing a second internet presence associated with the first website by the third party

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(e.g., 2d full paragraph of pg. 3). RFP does not explicitly show that the internet presence takes the form of a website. Realtor.com shows providing a second internet presence in the form of a website (in this case for Realtors where they can enhance listings by adding photos, etc.). It would have been obvious to one of ordinary skill in the art to modify the method of RFP by making the second internet presence a website in order to provide an intuitive interface and provide for more extended capabilities.

As to claim 7, it is noted that RFP shows collected data regarding sales.

As to claim 8, it is noted that RFP shows allowing manufacturers, sub-contractors, and vendors to view potential orders, groups of orders, and products viewed (and ordered) by customers in order to provide bids.

As to claim 9, it is noted that RFP shows providing web and communications tools to the builder, sub-contractors and suppliers.

As to claims 10, 22, 34, it is noted that RFP show providing messaging (e.g., 2d full paragraph of pg. 3).

As to claims 13, 19-21, 25, and 31-33, it is noted that the apparatus to perform the claimed tasks is shown since RFP shows accomplishing those tasks via computer and such apparatus is required in order to perform those tasks.

Claims 3, 11, 12, 15, 23, 24, 27, 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over RFP, or in the alternative unpatentable of RFP in view of Realtor.com.

As to claims 12, 24, and 36, RFP shows all elements except advertising products on the website. However, it is notoriously old and well known in the art to allow advertising of products or services on a website. It would have been obvious to one of ordinary skill in the art to do so in order to get additional revenue from advertising.

As to claims 3, 15, and 27, RFP shows providing purchase information and pre-purchase information. It does not show providing the other information types. However, it is notoriously old and well known in the art to provide such information. It would have been obvious to one of ordinary skill in the art to do so in order to provide useful information to clients (and therefore attract more users to the site) and to collect additional revenue via affiliate programs with service providers.

As to claims 11, 23, and 35, RFP shows all elements except charging up-front access, web design fees and data service fees to the builder and advertisers. However, it is notoriously old and well known in the art to do so. It would have been obvious to one of ordinary skill in the art to charge such fees in order to recover costs of resources used by the builders and advertisers.

Claims 2, 4-6, 14, 16-18, 26 and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over RFP in view of Fino et al (5,689,705), or in the alternative RFP in view of Realtor.com, and further in view of Fino et al.

As to claims 2, 14, and 26, RFP shows filtering and supplying product information. It does not explicitly show providing contract, financing, closing and post-sale forms and information. Fino et al show forms and information relating to contracting, financing, closing, and post-sale. It would have been obvious to one of ordinary skill in the art to modify the method of RFP by providing such forms and information in order to speed and facilitate the sales process.

As to claims 4, 16, and 28, RFP shows all elements except an online deposit system. Fino et al show an online deposit sytem comprising a system for scheduling and tracking the deposit online. It would have been obvious to one of ordinary skill in the art to modify the method of RFP by providing an online deposit system in order to provide an easily accessible status of the deposit.

As to claims 5, 17, and 29, it is noted that Fino et al show purchasing extras (options) using the online deposit system in that options are purchased, the overall price determined, a contract written and the deposit scheduled.

As to claims 6, 18, and 30, RFP shows all elements except an order verification and tracking system. Fino et al show an order verification and tracking system. It would have been obvious to one of ordinary skill in the art to modify the method of RFP by providing an order verification and tracking system in order to provide an easily accessible status of the order.

Response to Arguments

Applicant's arguments filed 8/9/2004 have been fully considered but they are not persuasive.

Applicants argue that the written description rejections are improper because the claims are part of the original specification. The examiner agrees that the claims are part of the original specification, but respectfully disagrees that they provided sufficient basis to fulfill the written description requirement. It is not clear what is intended to be implemented in some of the elements or how they would be implemented. While the elements are listed, they are not described in such a way as to suggest to one of ordinary skill in the art that the inventor had full possession of the claimed invention at the time of the application.

Regarding the addition of the second website, it is noted that the RFP reference shows extranet and intranet websites. In the alternative, if argued that a website is not explicitly shown, Realtor.com is used to teach the use of a website.

As required by MPEP 2144 (c), the statement that subject matter is old and well known (claims 3, 11, 12, 15, 23, 24, 27, 35 and 36) is taken as admitted prior art since the statement that the subject matter was old and well known was not traversed in the reply to the office action.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

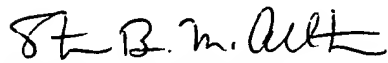
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. McAllister whose telephone number is (703) 308-7052. The examiner can normally be reached on M-Th 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert P. Olszewski can be reached on (703) 308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Steven B. McAllister

STEVE B. MCALLISTER
PRIMARY EXAMINER